



## PLANNING COMMISSION STAFF REPORT

<b>File No.</b>	<b>CP15-001</b>
<b>Applicant:</b>	<b>Diamond SJ Enterprise</b>
<b>Location</b>	<b>2855 Stevens Creek Boulevard</b>
<b>Existing Zoning</b>	<b>CG Commercial General</b>
<b>Council District</b>	<b>6</b>
<b>Historic Resource</b>	<b>No</b>
<b>Annexation Date:</b>	<b>February 18, 1954</b>
<b>CEQA:</b>	<b>Exempt</b>

**APPLICATION SUMMARY:** Conditional Use Permit to allow a 5,987-square foot public eating and drinking establishment (Fuze) with late night use until 2:00 a.m. on an approximately 71-gross acre site (Westfield Valley Fair Shopping Mall).

### RECOMMENDATION:

Staff recommends that the Planning Commission **approve** the **Conditional Use Permit** based on the facts and findings in this staff report and proposed Resolution (attached), and subject to the conditions stated in said Resolution.

### PROJECT DATA

GENERAL PLAN CONSISTENCY			
General Plan Designation		Regional Commercial <input checked="" type="checkbox"/> Consistent <input type="checkbox"/> Inconsistent	
Consistent Policies		LU-5.1	
Inconsistent Policies		None	
SURROUNDING USES			
	General Plan Land Use	Zoning	Existing Use
North	Residential Neighborhood	CO Commercial Office	Office and single-family residential
South	Neighborhood/ Community Commercial	CN Commercial Neighborhood	Commercial uses
East	Highway 17	CG Commercial General	Highway
West	City of Santa Clara	N/A	Commercial uses

## PROJECT DESCRIPTION

On January 5, 2015, the applicant filed a Conditional Use Permit (CUP) application to allow extended hours of operation from 12:00 midnight to 2:00 a.m. for a new public eating and drinking establishment (Fuze). The subject site is located within the CG Commercial General Zoning District. The Zoning Ordinance requires a CUP for public drinking establishments and late night uses that operate between 12:00 midnight and 6:00 a.m.

The 5,987-gross square foot tenant space, which includes a 5,019 square foot interior area and a 968-square foot patio, is at the southern main entrance of the mall building, buffered by a parking lot structure from Stevens Creek Boulevard.

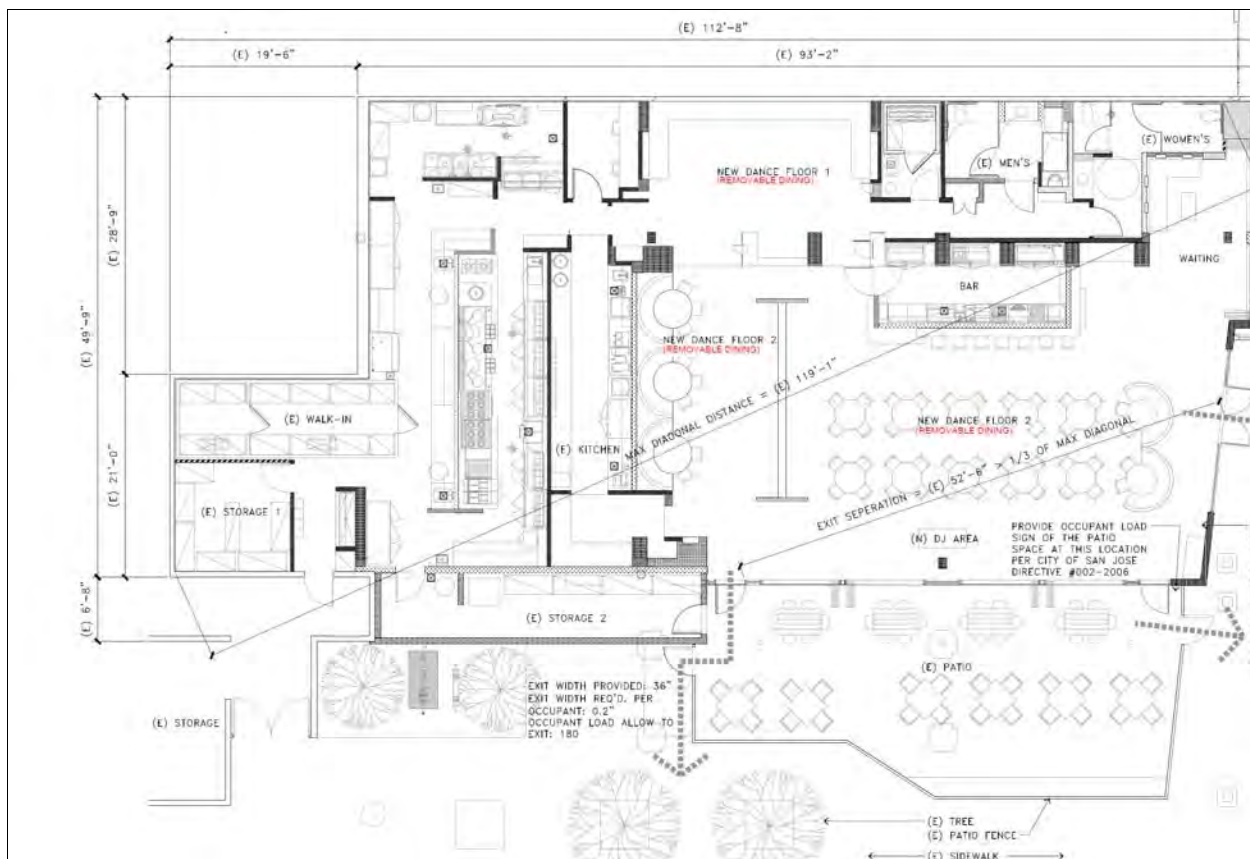


Figure 1: Proposed Floor Plan.

The applicant is proposing a restaurant and lounge that includes a drinking establishment and late night use until 2:00 a.m. Food service is proposed at all times and will be reduced to small plate menus after 10:00 p.m. The restaurant will close at 12:00 midnight on Tuesday and Wednesday, and at 10:00 p.m. on Sunday and Monday, similar to the current mall operating hours. Late night operation between 10:00 p.m. and 2:00 a.m. is proposed from Thursday through Saturday. Live entertainment and a DJ will be provided during the late-night hours. Minors will not be allowed after 10:00 p.m. when the lounge is in operation with entertainment or before the drinking establishment uses commence, whichever is earlier. Staff will clear any minors present before the start of entertainment.

The applicant is not proposing any major alterations to the interior or exterior façade of the building. The parking requirements for the subject establishment are met by the shared mall parking lots.

## ANALYSIS

The proposed Conditional Use Permit was analyzed with respect to conformance with: 1) the Envision San Jose 2040 General Plan, 2) the Zoning Ordinance, 3) City Council Policy 6-27: Evaluation of 24-Hour Uses, 4) City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars, and 5) the California Environmental Quality Act (CEQA).

### Envision San José 2040 General Plan Conformance

The subject site is designated Regional Commercial on the Envision San José 2040 General Plan Land Use/Transportation Diagram. Areas designated as Regional Commercial are, for the most part, existing regional shopping centers which support office, retail, service, residential, and entertainment uses. The project conforms to the General Plan Land Use/Transportation Diagram designation and the overall General Plan in that it proposes food and entertainment uses at a shopping center that is of a regional scale.

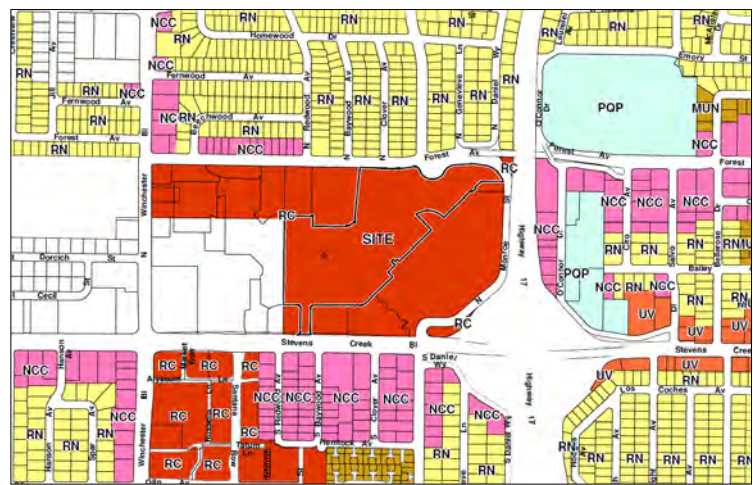


Figure 2: General Plan Map.

The project is also consistent with the following General Plan Land Use Policy:

- **General Land Use Policy LU-5.1:** In order to create complete communities, promote new commercial uses and revitalize existing commercial areas in locations that provide safe and convenient multi-modal access to a full range of goods and services.

*The business would occupy and revitalize a currently vacant tenant space at a prominent commercial hub. Valley Fair Mall is serviced by multi-modal access and provides a full range of goods and services that the proposed project would add to.*

### Zoning Ordinance

Per Section 20.40.100 of the Zoning Ordinance, a CUP is required for operations between the hours of 12:00 midnight and 6:00 a.m., as well as for drinking establishments.

### City Council Policy 6-27: Guidelines for Evaluation of 24-Hour Uses

The City Council Policy, Evaluation of 24-Hour Uses, is intended to assure compatibility of uses operating between 12:00 midnight and 6:00 a.m. with surrounding land uses. In regard to nightclubs and bars, the policy states that uses under this category should meet the City Council Policy on the Guidelines for Evaluation of Nightclubs and Bars, and that if they conform to

Council Policy 6-23, then they are in conformance with Council Policy 6-27. See the discussion below on conformance with Council Policy 6-23.

### **City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars**

The City Council Policy, Guidelines for Evaluation of Nightclubs and Bars, is intended to facilitate the evaluation process for individual permit applications by identifying the needed project characteristics that are necessary for approval. The applicable project characteristics required by the policy are inserted in italics below. The land use consideration for this permit is the drinking establishment use and the 24-hour operation (late-night use after midnight).

1. New bars outside the Downtown Core should be dispersed and, at a minimum, not be located within 500 feet of an existing bar or any existing school. Bars should be located and oriented in such a manner that would not adversely affect any nearby residential or school uses.

*Analysis: The project proposes late night use until 2:00 a.m. for a new public eating and drinking establishment. While located outside of the Downtown, the project is approximately 800 feet north of the Santana Row mixed-use development, another prominent entertainment hub in the City with multiple late-night public eating and drinking establishments. Santana Row provides similar uses and attracts similar clientele as the proposed project. However, Santana Row has a residential component, while Fuze is in an entirely commercial area and will not have any impacts to nearby residences. In addition, the project site is not within 500 feet of any existing schools or residences.*

*Another late-night public eating and drinking establishment (Popolo Lounge) in Valley Fair Mall was approved by the Planning Commission on February 26, 2014. However, that establishment is not in operation yet, though the CUP is still valid.*

2. It is the responsibility of the Chief of Police to evaluate all bar and nightclub proposals to ensure the safety and security of both patrons and citizens. Conditions may be imposed to monitor bars and nightclubs and to discourage nuisance activities. These conditions may include such requirements as interior or exterior security guards, additional lighting, limited occupancy, and modifications or controls or procedures to increase effective law enforcement.

New nightclubs and bars are discouraged from locating in areas where there has been above average police calls for service.

*Analysis: The Police Department provided crime statistics in regards to the subject Conditional Use Permit application. The subject site is located in Beat F2, which is over the 20% crime index, and thus the location is considered unduly concentrated. Beat F2 consists of the Cory neighborhood to the north of Valley Fair Mall, as well as Santana Row. In addition, the subject site is also located in a census tract that exceeds the ratio of on-sale retail licenses to population in the County.*

*In a memorandum to the Director of Planning, Building, and Code Enforcement dated January 21, 2015, the Police Department states that it is opposed to the issuance of the proposed Conditional Use Permit because the proposed use would put increased demand on already reduced police staffing. As this is not a land use issue, staff is supportive of the proposal as it provides a similar use to what is already provided in the area and incorporates similar operating procedures and hours. As noted above, the applicant submitted an Operations and Security Plan. The plan outlines several security measures including one security personnel for every fifty patrons who will be positioned along the interior and exterior of the establishment and additional security in the adjacent parking*

*garage and surrounding surface lots. The plan also requires all security staff to review and sign a "Security Staff Safety Policies" policy document. In accordance with the Police memo, the plan also incorporates a condition that no patrons under the age of 21 years old shall be allowed within the establishment when it is operating as a drinking and entertainment establishment. The operator shall ensure that all persons under 21 years of age shall exit the establishment before 10:00 p.m. or before the drinking establishment uses commence, whichever is earlier.*

*In addition to Fuze's security provisions, Westfield Valley Fair provides two to four security staff throughout the shopping center during operating hours. After the mall closes, one to two security staff monitor the shopping center.*

3. Nightclub and bar operators should provide daily cleaning of the public right-of-way up to 200 feet from the property lines of the site of the facility. This cleaning should occur before 8:00 a.m. each day.

*Analysis: The subject establishment is a part of an existing retail center and its maintenance program.*

4. Mechanical equipment used for outside maintenance, including blowers and street sweepers, etc., should not be used between 10:00 p.m. and 6:00 a.m. if the clean up occurs within 500 feet of existing residential uses.

Amplified sound may be restricted based on potential incompatibility with adjacent uses.

*Analysis: No residential uses are located within 500 feet of the subject tenant space.*

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

Under the provisions of Section 15301(a) of the State Guidelines for Implementation of the California Environmental Quality Act, this project is found to be exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended, in that the project involves no or negligible expansion of an existing use and the use will occur within an existing building.

## **CONCLUSION**

The City is generally supportive of commercial uses operating past midnight if the proposal conforms to the City Council's 24-Hour Use Policy. The project conforms to most aspects of the policy, but does not have the support of the Police Department because a late night use would put increased demand on already reduced police staffing. In a memorandum to the Director of Planning dated January 21, 2015, the Police Department states that it is opposed to the issuance of the proposed Conditional Use Permit. However, this is not a land use issue and Planning staff believes that through incorporation of the security measures described in the attached Operations and Security Plan and responsible management, the project will not pose a significant impact to safety. The Conditional Use Permit Resolution incorporates conditions requiring food service at all hours of operation, provision of an Entertainment Permit through the Police Department, security in accordance with the submitted Operations and Security Plan, and the prohibition of loitering and nuisance activities.

**PUBLIC HEARING NOTIFICATION**

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.  
(Required: Website Posting)
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.  
(Required: E-mail and Website Posting)
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. (Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)

Although this item does not meet any of the criteria above, staff followed Council Policy 6-30: Public Outreach Policy. A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the project site and posted on the City website. The staff report is also posted on the City's website. Staff has been available to respond to questions from the public.

**Project Manager:** Rebecca Bustos

**Approved by:** *SYLVIA D*, Division Manager for Harry Freitas, Planning Director

**Date:**

*2/13/15*

**Attachments:**

Police Memorandum (January 21, 2015)  
Operations and Security Plan  
Draft Resolution  
Reduced Plan Set

**Owner:**

VF Mall LLC  
2855 Stevens Creek Boulevard  
Santa Clara CA 95050

**Applicant:**

Diamond SJ Enterprise  
2855 Stevens Creek Boulevard  
Santa Clara CA 95050





# Memorandum

**TO:** Rebecca Bustos  
Planning Department

**FROM:** Ofc. Mike Epp #3048  
San Jose Police Vice Unit

**SUBJECT:** CP15-001  
Fuze  
2855 Stevens Creek Blvd

**DATE:** January 21, 2015

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Approved

Date

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I have received your request for input regarding “Fuze” located in Valley Fair Shopping Center at 2855 Stevens Creek Blvd, San Jose, CA. It is a new restaurant with a pending Type 47 ABC On-Sale General Eating Place license that is seeking a Conditional Use Permit for late night hours until 2:00 a.m.

Per Business and Professions (B&P) Code Section 23958, the State of California Department of Alcohol Beverage Control shall deny an ABC Application for an ABC License if the issuance of that license would tend to create a law enforcement problem or if it would result in or add to an undue concentration of ABC Licenses, as described in B&P Sections 23958.4 (a)(1) and 23958.4(a)(2). A location can be unduly concentrated because of its criminal statistics and/or it’s proximity to other ABC Licenses. ABC can issue the license per B&P Sections 23958.4 (b)(1), and 23958.4 (b)(2) if the local governing body determines that the public convenience or necessity would be served. The City of San Jose Planning Department or the Planning Commission are the delegated authorities to grant these exceptions.

The location is not currently in a Strong Neighborhood Initiative area.

The location of 2855 Stevens Creek Blvd is located in San Jose Police Beat F2. The reported crime statistics as defined by B&P Section 23958.4(c) are over the 20% crime index thus the location **is** considered unduly concentrated per B&P Section 23958.4 (a)(1).

## Police Beat Crime Statistics

Beat	Index Crimes	Arrests	Total	20% Above Average
F2(2013)	642	119	761	Yes
City Average	333	171	504	

Department of Alcohol Beverage Control (ABC) records indicate that 2855 Stevens Creek is in census tract 5058.00. Pursuant to B&P Section 23958.4 (a)(2), the ratio of on-sale retail licenses to population in census tract 5058.00 **does** exceed the ratio of on-sale retail licenses to population in the county in which the applicant premises are located.

### **Authorized and Current ABC Licenses in Census Tract 5058.00**

Census Tract	Authorized ABC Licenses as of August 2014		Current ABC Licenses as of January 2015		Unduly Concentrated	
	On - Sale	Off - Sale	On - Sale	Off – Sale	On - Sale	Off – Sale
5058.00	4	2	10	4	Yes	Yes

The San Jose Police Department is **opposed** to the issuance of a Conditional Use Permit for a new restaurant and drinking establishment with late night hours until 2:00 a.m. A late night restaurant and drinking establishment would put increased demand on already reduced police staffing. The downtown entertainment zone is staffed with extra officers in the late night hours to handle the increased demand in calls for service and criminal activity that comes from late night establishments. This location is out of that entertainment zone thus lacking the extra officers to handle an increase in the demand for police services.

If a Conditional Use Permit is issued the San Jose Police Department would like the following condition included:

- **Age of Patrons:** If a restaurant use is instated, patrons under 21 years of age are permitted within the restaurant area, with the following exceptions: No patrons under the age of 21 years old shall be allowed within the establishment when it is operating as a drinking and entertainment establishment. The operator shall ensure that all persons under 21 years of age shall exit the establishment before 10:00 p.m. or before the drinking establishment uses commence, whichever is earlier.

Allowing minors to remain on the premises when alcohol is being served and entertainment is occurring with a nightclub like atmosphere would increase the potential for underage patrons to get involved in alcohol related incidents. It would also increase the risk to the public health, safety and welfare of patrons.

Please feel free to contact me at 277-4322 if you have any questions.

Ofc. Mike Epp #3048  
Administrative Officer  
Special Investigations/Vice



# FUZE

## Restaurant Lounge

### **What and Who is FUZE**

The plan is to bring a hip, high energy restaurant lounge with live entertainment to the Westfield Valley Fair Mall. A place where people can have an upscale fun atmosphere day and night of food, after work appetizers, late night snacks, and live entertainment while mingling and socializing. When you come to FUZE you can choose the casual patio vibe, or the comfort of the inside offering a combination of great entertainment, food and drinks.

The fun signature drink menu featuring specialty cocktails, swirls, over 20 custom margaritas all in custom glassware along with a classic Mexican menu that will create an upbeat atmosphere for people. Our target market is the same caliber of clientele that already patronizes Santana Row, Westfield Valley Fair Mall, and downtown Campbell, Los Gatos and Saratoga.

Jenny Wolfes, Diamond SJ Enterprise has a 10 year track record of running a successful entertainment venue, Studio 8 in downtown San Jose. Jenny, who will be managing and operating FUZE, has 17 years of operation management and marketing experience in the restaurant, lounge, and nightclub industry. Jenny Wolfes has been corporately trained and has owned several of her own venues.

FUZE looks forward to opening in spring of 2015 in Westfield Valley Fair. The restaurant lounge has the ingredients for a successful and unbeatable fun environment with food and entertainment for all ages.

**FUZE**  
**Restaurant Lounge**  
**Diamond S.J. Enterprise**

**Westfield Valley Fair Shopping Center**  
2855 Stevens Creek Boulevard, San Jose, CA

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**Contact Person**  
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*Escobar* Legacy Consulting  
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# FUZE

## Restaurant Lounge

### Operating Information

#### Description

FUZE, a 4,194 sf restaurant lounge is proposed at Westfield Valley Fair Mall, 2855 Stevens Creek Boulevard, south side, facing Santana Row. The restaurant will feature classic Mexican food and entertainment that will create a fun upbeat atmosphere.

- The restaurant will serve a full menu of food from 11:00 AM until 10:00 PM with a small plate menu until 2:00 AM when lounge activity takes place.
- The restaurant will close at midnight on Tuesday and Wednesday, and at 10 PM on Sunday and Monday, similar to the Mall closing time.
- Ambient music will be provided from 11:00 AM to 10:00 PM.
- Live music will be provided for corporate happy hours and private events.
- The lounge will be in operation 10:00 PM - 2:00 AM from Thursday thru Saturday.
- The lounge may change days of operation (until 2 AM) to other days of the week so as to accommodate special events or changes in customer trends. The appropriate agencies will be noticed prior to changing the schedule.
- Entertainment, live and DJ will be provided during lounge hours.
- Families are welcome when the restaurant is in operation.
- Minors will not be allowed after 10:00 PM when the lounge is in operation with entertainment or before the drinking establishment uses commence, whichever is earlier. Staff will clear any minors present before the start of entertainment.

**Parking** for the restaurant is immediately available in a three-story garage (1,400 spaces) located in front of the restaurant, and through out the shopping center parking lot.

- Valet parking stand is located next to the entrance to the parking garage in front of the restaurant during Mall hours.
- Parking for lounge patrons will be available in the parking garage and on the surface lot in front of Cheesecake Factory after 10:00 PM.
- Parking is not available on the surface lots after the Mall closes except for the area (120 spaces) in front of the Cheesecake Factory that is also used by Santana Row patrons.

**FUZE staff (interior & exterior) will provide security** when entertainment commences at 10:00 PM and until closing, and until customers have cleared the area and the garage, at minimum 2:00 AM or as mandated by the City of San Jose Entertainment Permit.

- The Entertainment Permit requires one (1) security per fifty people; FUZE's Management will be providing additional security beyond what is required according to the various entertainments scheduled and anticipated attendance. Management's goal is to provide sufficient security to prevent calls for service to the City of San Jose Police Department.
- Westfield Valley Fair Security provides 2-4 security staff throughout the shopping center, inside and out during Mall hours. Security uses a truck clearly marked "security".
- After the Mall closes, 1-2 staff monitors the shopping center. There is always one security with a vehicle. Shift change occurs at 11:00 PM daily.
- During lounge hours, 10:00 PM to 2:00 AM FUZE security staff will monitor the interior and the southern exterior area utilized by FUZE patrons and the other restaurants located along Beechwood Avenue.
- Additional security will be provided by FUZE in the adjacent parking garage and designated surface lots within the proximity of the restaurant lounge. Security will walk the lot in a set rotation, to make sure it is monitored at all times.
- Parking lots adjacent to the Chase Bank and Bank of America on the south side of the Mall are not available for public parking after the Mall closes (signage). Security will not be necessary in those areas.

# **DIAMOND S.J. ENTERPRISE dba FUZE Restaurant Lounge**

**Westfield Valley Fair Shopping Center  
2855 Stevens Creek Boulevard, San Jose, CA**

## **SECURITY PROCEDURES**

### **A. Introduction**

It is the goal and responsibility of FUZE management and staff that all patrons have an enjoyable and safe experience. The staff is trained to provide outstanding service and to detect any potentially dangerous situations. The staff is also trained to diffuse any agitated situations with minimal or no force. There is also protocol to use physical restraint when necessary to protect other patrons, staff or property.

### **B. Policy**

It is the responsibility of FUZE staff to limit the use of physical restraint to those circumstances in which there is no reasonable alternative:

1. To protect the life, health, (physical and mental) and general welfare of all customer and staff.
2. To prevent the destruction of property of significant value belonging to FUZE and it's staff.
3. To prevent intoxicated customers from injuring themselves and others.

### **C. Definition**

As in the statement, the term "physical restraint" shall refer to physically restraining a customer, to physically removing a customer against his/her will to a place of safety.

### **D. General Rules**

1. Use physical force only to the extent necessary to bring the situation under control.
2. Corporal punishment of physical force is strictly prohibited.
3. In the instances in which a customer must be fully restrained or subdued, staff is required to call for assistance unless the situation clearly requires immediate action and the staff member judges that he/she can handle the situation without injury to themselves or the customers. In most instances, a show of force may deter the customer from any further violent action. If force is necessary, the involvement of more than one staff member decreases the possibility of injury to customer and staff.

### **E. Staff Training**

1. All staff working at FUZE is required to be trained in the appropriate use of physical force. For the purposes of this policy, "the term staff is defined as Doormen and security.
2. Managers and staff shall be trained in incident report writing including the accurate reporting of all events and behavior resulting in the use of physical restraint.
3. In general, staff shall comply with the principles and techniques promulgated by the authorized restraining program.

F. Circumstances under which the *use of force* may be necessary

1. By any staff member to protect him/her self.
2. To protect other customers from possible injury.
3. To protect intoxicated customers from injuring themselves and others.
4. If the customer continues their behavior and involves Management and the other staff, they should be asked to leave. If staff members feel they cannot handle the situation alone, they should contact another staff member for assistance immediately. Once there is a show of force, the customer should be asked quietly and politely to leave the premises immediately.

**Note:** Whenever possible the staff member should attempt to persuade the customer through verbal interaction. Physical restraint should always be the last result.

5. In the event that a customer has to be removed from the premises, staff should first ask the customer to walk under his or her own power. The staff member should walk along side the customer escorting them off the premises. This is to assure their safety and the safety of other FUZE customers when necessary, call for transportation if patron does not have a ride.

F. Should a customer have to be physically removed due to the reason mentioned above (Section F. of this policy). Staff member shall remain professional and move the customer off the premises as quickly and quietly as possible through the closest door. If in the patio area, the customer(s) should be escorted out the door that leads out to Beechwood Avenue. If in the bar area, the main door should be used when ever possible). This will be a judgment made by the staff and the floor manager dealing with the situation.

H. Medical Attention

In the event that a customer receives a minor (scrap or minor cut) injury during a physical altercation, it is the responsibility of the Floor Manager and the staff to administer basic first aid. If the injuries are more serious, a medical professional shall be called immediately. We are not required to be certified in first aid. In the event that serious medical attention is needed, the Floor Manager and police will make a judgment whether to call for medical attention with the customer's permission only. In instances where the customer's life is in jeopardy medical attention will be called immediately by the Floor Manager or the police.

I. Records/ Reports/ Communications

1. Any incident involving physical force shall be recorded by the staff member(s) involved in the situation along with the Floor Manager before leaving their shifts.
2. The use of force will be communicated to the Manager as soon as possible. In cases of minor alterations without injuries, the Manager shall contact the owners within a 24-hour period. In cases of serious incidents, the Manager shall contact the owners immediately after the situation has been brought under control.

3. The staff member or Floor Manager shall get the following information from the customer involved in the situation. The report should include the following need not necessarily be limited to, the following:
  - a. Date and time of the incident.
  - b. Precipitating factors leading up to the use of physical force.
  - c. Location of the incident.
  - d. Name of the person(s) involved.
  - e. Statements from all persons involved.
  - f. Statement from the staff member involved.
  - g. Name and type of any medical professionals used.
  - h. The medical condition of the person(s) involved when they left FUZE Restaurant Lounge.
4. Staff shall perform a visual check, ask the customer if they have any injuries, and record their findings and the customer's statement.
5. Staff will be trained in the proper procedure for completing this incident form.

\_\_\_\_\_

**FUZE Restaurant Lounge**  
2855 Stevens Creek Boulevard, San Jose, CA

**Security Staff Safety Policies**

Each member of the FUZE Security Staff shall review and become familiar with the following safety policies, retain a copy for reference, and sign and return a copy to management.

1. The primary responsibility of all security personnel is to protect and maintain the safety of FUZE patrons, employees, and all other individuals on the premises. Security personnel shall respond immediately to any situation that may pose a risk to any individual, and shall contact other security personnel for assistance.
2. Security personnel shall promptly intervene and subdue any violent, dangerous, or offensive situation. In doing so, security personnel shall take every precaution to prevent injury to any individual, including the person(s) responsible for the offensive conduct.
3. Security personnel shall not initiate physical contact with any individual unless it is necessary to stop a dangerous or potentially dangerous situation. Whenever possible, security personnel shall try to defuse such situations by speaking to the individuals involved. Security personnel shall be polite and respectful in all communications.
4. If a violent or dangerous situation requires physical intervention, security personnel may restrain an individual who poses a safety risk. In doing so, security personnel shall take every precaution to prevent injury or offensive contact to the person(s) being restrained. Only reasonable and necessary force may be used. The mission of the security staff is to stop violent behavior, and to prevent violent individuals from harming others. Security staff may never retaliate against any individual, regardless what the individual has done.
5. If security personnel restrain or apprehend any individual for violent or unruly conduct, they shall immediately contact management, so that management may contact police as necessary.
6. All physical altercations shall be reported to management.
7. Security personnel shall inform management immediately after making physical contact with any individual.
8. Security personnel shall inform management if any individual is struck or injured by anyone, so that management may contact police or medical assistance as necessary.
9. Security personnel are personally liable, both criminally and civilly, for any improper acts, whether done intentionally or negligently.
10. Security personnel shall obey all local, State, and Federal laws and ordinances at all times, both in the performance of their job duties and when they are not working at FUZE.

\_\_\_\_\_  
Staff Name (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Staff Signature

Received  
Staff \_\_\_\_\_

\_\_\_\_\_  
Date



**FUZE Restaurant Lounge  
Employee Information**

**The California Penal Code**

It is imperative that all employees of FUZE Restaurant Lounge read this 2-page document and know the law as this information will help in the execution of your duties.

In your work, you are faced with a number of situations that may involve potentially dangerous situations. Knowing what you can and cannot do in those situations safeguards FUZE Restaurant Lounge and yourself from possible lawsuits. Please read these laws and if you have any questions please direct them to the Head of Security.

**Definitions**

240. a.) An Assault is an unlawful attempt, coupled with a present ability, to commit a violent injury on the person of another.

241. a.) An Assault is punishable by a fine not to exceed one thousand dollars (\$1,000), or imprisonment in the county jail not exceeding six months, or both the fine and imprisonment.

242. a.) A Battery is a willful and unlawful use of force or violence upon the person of another.

243. a.) A Battery is punishable by a fine not exceeding two thousand (\$2,000), or by imprisonment in the county jail not exceeding six months, or both fine and imprisonment.

415. Any of the following persons should be punished by imprisonment in the county jail for a period of not more than 90 day, a fine of not more than four hundred dollars (\$400.00) or both imprisonment and fine.

1.) Any person who unlawfully fight in a public place or challenges another person in a public place to fight.

2.) Any person who maliciously and willfully disturbs another person by loud and unreasonable noise.

3.) Any person who uses offensive words in a public place that are inherently likely to provoke an immediate violent reaction.

647. Every person who commits any of the following acts is guilty of disorderly conduct, a misdemeanor.

f) Who is found in a public place under the influence of intoxicating liquor, any drug, controlled substance, or toluene, or any combination of any intoxication liquor, drug, controlled substance, or toluene, in such a condition that he/she is unable to exercise care for his or her safety or the safety of others, or by reason of his/she being under the influence of intoxicating liquor, drug controlled substance, toluene, or combination of any intoxicating liquor, drug, controlled substance, or toluene, interferes with or obstructs or prevents the free use of the street, sidewalk, or public way.

647.1 In addition to any fine under the Section 647. The judge may assess a fine not exceeding seventy dollars (\$70.00) against any person who violates (f) Section 647

834. An arrest is taking a person into custody, in case and in the manner authorized by law. A Peace Officer or Private Person may make any arrest.

836. An arrest is made by an actual restraint of the person, or by submission to the custody of an Officer. The person arrested may be subject to such restraint as is reasonable for his arrest and detention.

837. A Private Person may arrest another:

- 1.) For a public offense committed or attempted in his presence.
- 2.) When the person arrested has committed a felony, although not in his presence.
- 3) When a felony has been in fact committed and he has reasonable cause for believing the person arrested to have committed it.

839. Any person may orally summon as many persons as he deems necessary to aid him therein.

841. The person making the arrest must inform the person being arrested of the intention to arrest him, of the cause for the arrest, and the authority to make the arrest, except when the person making the arrest has reasonable cause to believe that the person to be arrested is actually engaged in the commission of or an attempt to commit an offense, or the person to be arrested is pursued immediately after its commission, or after an escape. The person making the arrest must, upon request of the person he is arresting, inform the latter of the offense for which he is being arrested.

### **Employee Responsibility**

It is the responsibility of all FUZE Restaurant Lounge employees to read this information and to act in compliance of all the above-mentioned laws at all times, and to behave in a professional manner in the commission of their duties. In the event an employee does not act in compliance with these laws and all other rules governing employee behavior in the performance of their duties, the employee can be dismissed, pending an investigation. The owners of FUZE Restaurant Lounge will not take responsibility to protect employees who commit acts of noncompliance of the Laws and Rules governing professional behavior of its employees. All security and bartenders personnel must attend ABC LEAD classes. All security must have and carry a California Guard Card and attend security seminars held once a month at FUZE Restaurant Lounge.

Employee Name (print): \_\_\_\_\_

Employee Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Manager Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## FOOD MENU

### CHOICE OF MEATS

POLLO ASADA – CHICKEN

CARNE ASADA – BEEF

CHILE VERDE - PORK/ TORNATILLO

CARNITAS- BRAISED PORK

## APPETIZERS

### CHIPS AND SALSA

### CHIPS AND GUACAMOLE

Fresh avocados, pico de gallo and fresh lime juice

### NACHO'S

Crisp chips topped with refried beans, a trio of melted cheese, fresh guacamole and pico de gallo

### HOT and SPICY WINGS

Chicken wings in your choice of our Mexican BBQ or spicy wing sauce served with homemade ranch dipp

## TACO

### CLASSIC TACO

Choice of meat with beans, cheese and salsa .

### FISH TACO

Fried fish,pico de gallo,shredded cabbage and salsa

### VEGGIE TACO

fresh veggies, cheese, salsa fresca, black beans, and salsa

### SHRIMP TACO

Grilled shrimp,pico de gallo,shredded cabbage and salsa

### BURRITOS

### CLASSIC BURRITO

Choice of meat ,rice,cheese,beans,and Pico de gallo

### SHRIMP BURRITO

Grilled Shrimp Rice, beans,jack cheese,and Pico de gallo

### GRILLED VEGGIE BURRITO

Garden fresh veggies, guacamole, cilantro rice, cheese, salsa fresca, black beans, and

### BEAN AND CHEESE BURRITO

Pinto beans and cheese

### CLASSIC QUESADILLA

A flour tortilla, Monterey Jack cheese and salsa with fresh guacamole and sour cream on the side.

## **RESOLUTION NO.**

A Resolution of the Planning Commission of the City of San Jose approving a Conditional Use Permit to allow a 5,987 square foot public eating and drinking establishment with late night use to 2:00 a.m. on an approximately 71 gross acre site (Westfield Valley Fair Shopping Mall) located at 2855 Stevens Creek Boulevard.

## **FILE NO. CP15-001**

WHEREAS, pursuant to the provisions of Chapter 20.100 of Title 20 of the San José Municipal Code, on January 5, 2015, an application (File No. CP15-001) was filed with the City of San José for a Conditional Use Permit to allow a 5,987 square foot public eating and drinking establishment (known as “Fuze”) with late night use to 2:00 a.m. on that certain real property situated in the CG Commercial General Zoning District and located at 2855 Stevens Creek Boulevard, San José (hereinafter referred to as "subject property"); and

WHEREAS, the subject property is all that real property more particularly described in Exhibit "A," entitled “Legal Description,” which is attached hereto and made a part hereof by this reference as if fully set forth herein; and

WHEREAS, pursuant to and in accordance with Chapter 20.100 of Title 20 of the San José Municipal Code, the Planning Commission conducted a hearing on said application on February 25, 2015, notice of which was duly given; and

WHEREAS, at said hearing, the Planning Commission gave all persons full opportunity to be heard and to present evidence and testimony respecting said matter; and

WHEREAS, at said hearing this Planning Commission received and considered the reports and recommendation of the Director of Planning, Building and Code Enforcement; and

WHEREAS, at said hearing, this Planning Commission received in evidence a plan for the subject property entitled, "Fuze Restaurant/ Lounge” dated January 2015, said plan is on file in the Department of Planning, Building and Code Enforcement and is available for inspection by anyone interested herein, and said development plan is incorporated herein by this reference, the same as if it were fully set forth herein; and

WHEREAS, said public hearing was conducted in all respects as required by the San José Municipal Code and the rules of this Planning Commission;

WHEREAS, this Planning Commission has heard and considered the testimony presented to it at the public hearing, and has further considered written materials submitted on behalf of the project applicant, City staff, and other interested parties;

NOW, THEREFORE, BE IT RESOLVED BY THE PLANNING COMMISSION OF THE CITY OF SAN JOSE THAT:

The Planning Commission determines, concludes and finds as follows:

1. **Site Description and Surrounding Uses.** The project site is located within a currently vacant tenant space in Westfield Valley Fair Shopping Mall, at 2855 Stevens Creek Boulevard. The overall project site is surrounded by residential and office uses to the north, commercial uses to the south, Interstate 880 to the east, and City of Santa Clara commercial uses to the west.
2. **Project Description.** The subject Conditional Use Permit (CUP) would allow a 5,987-square foot public eating and drinking establishment (Fuze) with late-night use to 2:00 a.m. on an approximately 71-gross acre site (Westfield Valley Fair Shopping Mall). The approximately 5,987-gross square foot tenant space, which includes a 5,019-square foot interior area and a 968-square foot patio, is at the southern main entrance of the mall building, buffered by a parking lot structure from Stevens Creek Boulevard. The applicant is proposing a restaurant and lounge that includes a drinking establishment and late night use until 2:00 a.m. Food service is proposed at all times and will be reduced to small plate menus after 10:00 p.m. The restaurant will close at 12:00 a.m. on Tuesday and Wednesday, and at 10:00 p.m. on Sunday and Monday, similar to the current mall operating hours. Late night operation between 10:00 p.m. and 2:00 a.m. is proposed from Thursday through Saturday. Live entertainment and a DJ will be provided during the late night hours. Minors shall not be allowed after 10:00 p.m. when the lounge is in operation with entertainment or when the drinking establishment uses commence, whichever is earlier. Staff will clear any minors present before the start of entertainment. The applicant is not proposing any major alterations to the interior or exterior façade of the building. The parking requirements for the subject establishment are met by the shared mall parking lot.
3. **General Plan Conformance.** The project is consistent with the General Plan in that the Regional Commercial designation is, for the most part, existing regional shopping centers which support office, retail, service, residential, and entertainment uses. The project conforms to the General Plan Land Use/Transportation Diagram and the General Plan overall in that it proposes food and entertainment uses at a shopping center that is of a regional scale.
4. **Zoning Ordinance Compliance.** The project is consistent with the regulations of the Zoning Ordinance in the following manner:
  - a. **Land Uses.** Per Section 20.40.100 of the Zoning Ordinance, a CUP is required for operations between the hours of 12:00 a.m. and 6:00 a.m., as well as for public drinking establishments.
5. **Environmental Review.** Under the provisions of Section 15301(a) of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended, in that the use will occur in an existing building with no proposed major modifications and involves no or negligible expansion of the prior use.

6. **Conditional Use Permit Findings.** Chapter 20.100 of Title 20 of the San José Municipal Code establishes required findings for issuance of a Conditional Use Permit, which findings are made for the project based on the above-stated findings related to General Plan, Zoning and CEQA conformance and other permit findings discussed above, and subject to the conditions set forth in this permit.

- a. The proposed use at the location requested will not:
- i. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - ii. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - iii. Be detrimental to public health, safety or general welfare in that:

The project proposes late night use until 2:00 a.m. for a new public eating and drinking establishment. While located outside of the Downtown, the project is in close proximity to the Santana Row mixed-use development, another prominent entertainment hub in the City with multiple late-night public eating and drinking establishments. Santana Row provides similar uses and attracts similar clientele as the project would. However, Santana Row has a residential component, while the project is in an entirely commercial area and is not within 500 feet of any existing schools or residences. Another late-night public eating and drinking establishment (Popolo Lounge) in Valley Fair Mall was approved by the Planning Commission on February 26, 2014. However, that establishment is not in operation yet, though the CUP is still valid.

The project substantially conforms to City Council Policy 6-27: Evaluation for 24-Hour Uses and City Council Policy 6-23: Guidelines for Evaluation of Nightclubs and Bars in that the applicant submitted an Operations and Security Plan. The plan outlines several security measures including one (1) security personnel for every fifty (50) patrons who shall be positioned along the interior and exterior of the establishment and additional security in the adjacent parking garage and surrounding surface lots. The plan also requires all security staff to review and sign a "Security Staff Safety Policies" policy document.

- b. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas in that:
- i. The project site is within a larger mall property with significant buffer from surrounding residences.
- c. The proposed site is adequately served:
- i. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - ii. By other public or private service facilities as are required.

The subject site is adequately accessible from public streets and the use will not adversely impact the quality of traffic.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby **approved**. This Planning Commission expressly declares that it would not have approved this Permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

## CONDITIONS

1. **Acceptance of Permit.** Per Section 20.100.290(B) of Title 20 of the San José Municipal Code, should the applicant fail to file a timely and valid appeal of this Permit within the applicable appeal period, such inaction by the applicant shall be deemed to constitute all of the following on behalf of the applicant:
  - a. Acceptance of the Permit by the applicant; and
  - b. Agreement by the applicant to be bound by, to comply with, and to do all things required of or by the applicant pursuant to all of the terms, provisions, and conditions of this Permit or other approval and the provisions of Title 20 applicable to such Permit.
2. **Building Permit/Certificate of Occupancy.** No change in the character of occupancy or change to a different group of occupancies as described by the Building Code shall be made without first obtaining a Certificate of Occupancy from the Building Official, as required under San José Municipal Code Section 24.02.610, and any such change in occupancy must comply with all other applicable local and state laws.
3. **Fire Safety.** The project shall conform to all requirements of the Fire Department.
4. **Conformance with Plans.** Any development shall conform to the plans entitled, "Fuze Restaurant/Lounge" dated January 2015, on file with the Department of Planning, Building and Code Enforcement, and to the San José Building Code (San José Municipal Code, Title 24), both as may be subsequently amended subject to City approval. The approved plans are referred to in this Permit as the "approved plans" or "Approved Plan Set".
5. **Compliance with Local and State Laws.** The subject use shall be conducted in full compliance with all local and state laws. No part of this approval shall be construed to permit a violation of any part of the San José Municipal Code.
6. **Use Authorization.** The Conditional Use Permit authorizes a public eating and drinking establishment with late-night use to 2:00 a.m. Thursday through Saturday.
7. **ABC License:** The permittee shall obtain and maintain the appropriate license, based on the use of the facility from the State of California Department of Alcoholic Beverage Control (ABC) and shall remain in full compliance with that license.
8. **Entertainment Permit.** The permittee shall obtain and maintain the appropriate Public Entertainment Permit, as applicable, from the City of San José Police Department.
9. **Food Service.** Food service shall be available at all hours of operation.
10. **Hours of Operation.** The hours of operation for the public eating and drinking establishment may be from 10:00 a.m. to 2:00 a.m., Thursday through Saturday. The establishment shall operate from 10:00 a.m. to 12:00 a.m. on Tuesday and Wednesday, and from 10:00 a.m. to 10:00 p.m. on Sunday and Monday, similar to the current mall operating hours.



11. **Security.** Permittee shall comply with, and ensure that the permittee's owners, managers and employees comply with, the standards for internal and external security arrangements, including but not limited to provision of State licensed, uniformed security guards, required by Section 6.60.240 of Chapter 6.60 of Title 6 of the San José Municipal Code, as amended, during hours that the establishment is operating as a public entertainment establishment. As agreed to by the applicant, a minimum of one (1) security officer shall be on duty for every 50 patrons using the bar facility (during the hours of operation or while entertainment is being provided). The permittee shall maintain state licensed security approved by the Police Department to effectively control crime, gang, drug and other public safety problems that may arise.
12. **Loitering Prohibited.** Loitering by the patrons within a 500-foot radius of the doors of the premises shall be prohibited during hours of operation or after closing. The permittee shall proactively work to clear this area (500-foot radius of the doors of the premises) within half an hour of closing of their operation on all days of the week.
13. **Queuing.** The permittee shall use stanchions to contain the queuing line for its entire length. The queuing operation for the facility shall not disrupt pedestrian movements on the sidewalk, and shall allow for 8 feet of clear pedestrian movement at all times. The queuing operation shall utilize the frontage of the subject site before utilizing adjacent business frontage.
14. **Security Program.** The Operations and Security Plan prepared by the permittee, dated January 2015, on file with the Department of Planning, Building and Code Enforcement, outlines the operational and security standards and is approved with this permit. The permittee shall ensure conformance to said program.
15. **Anti-Graffiti.** The permittee shall remove all graffiti from buildings, fences, and wall surfaces within 48 hours of defacement.
16. **Anti-Litter.** The site and surrounding area shall be maintained free of litter, refuse, and debris.
  - a. Cleaning shall include keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.
  - b. The permittee shall clean the public right-of-way within 200 feet of the subject site before 8:00 a.m. each day.
  - c. Mechanical equipment used for outside maintenance, including blowers and street sweepers may not be used between 10:00 p.m. and 6:00 a.m. daily.
  - d. The permittee shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the adjacent rights-of-way, nor create a nuisance for adjoining businesses.
17. **Noise.** During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.
18. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
19. **Disturbance Coordinator.** The permittee shall designate a Disturbance Coordinator responsible for ensuring compliance with the hours of operation, Operations and Security Plan, and other nuisance compliance conditions in this permit. The Disturbance Coordinator shall also listen and respond to neighborhood concerns regarding the businesses' operations and institute

reasonable measures warranted to correct the problem in a timely manner. The Disturbance Coordinator shall maintain a log of calls and shall make that log available to the City of San José upon request.

20. **Lighting.** No new on-site lighting shall be approved through issuance of this Permit.
21. **Sign Approval.** No new signs shall be approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
22. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2 of Chapter 20.100, of Title 20 of the San José Municipal Code it finds:
- a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

Based on all of the above facts and findings for this Conditional Use Permit application, third proposal to use the subject property for said purpose specified above is hereby approved.

**APPROVED** this **25<sup>th</sup> day of February, 2015** by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

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DORI YOB  
Chairperson

ATTEST:

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HARRY FREITAS  
Director of Planning, Building & Code Enforcement  
Planning Commission Secretary

#### NOTICE TO PARTIES

*The time within which judicial review must be sought to review this decision is governed by the provisions of the California Code of Civil Procedure Section 1094.6.*

**2855 Stevens Creek BLVD A124**

**San Jose Ca 95128**

## PROJECT DATA

### Conditional Use Permit for Restaurant /Lounge

**APN NUMBER**

AREA SF

**ACRES**

## 1) SITE PLAN

### With after Midnight Use

**274-430-79**

5019 SF

## 18.5

## 2) FLOOR PLAN

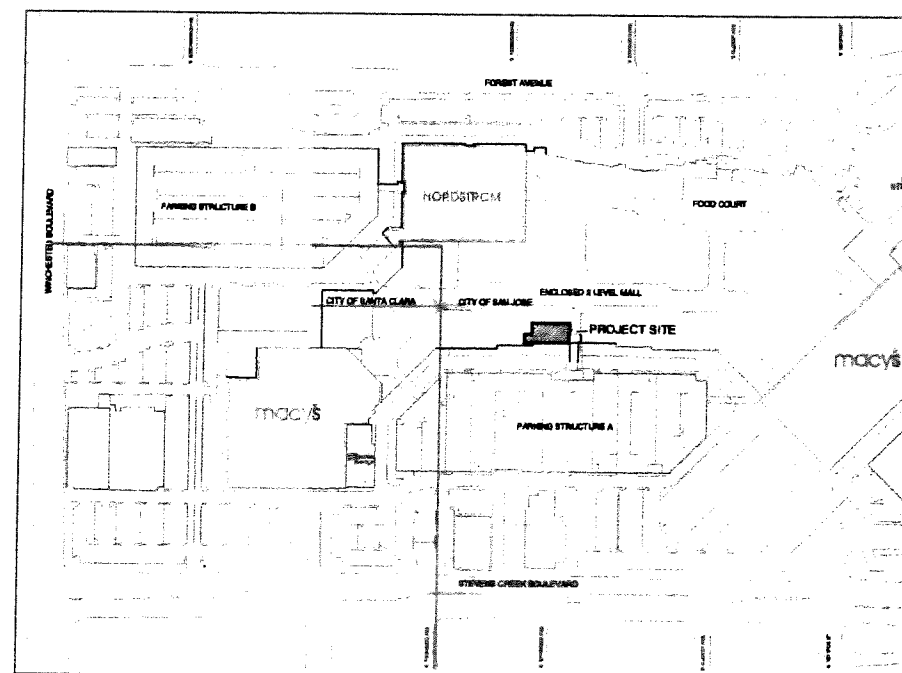
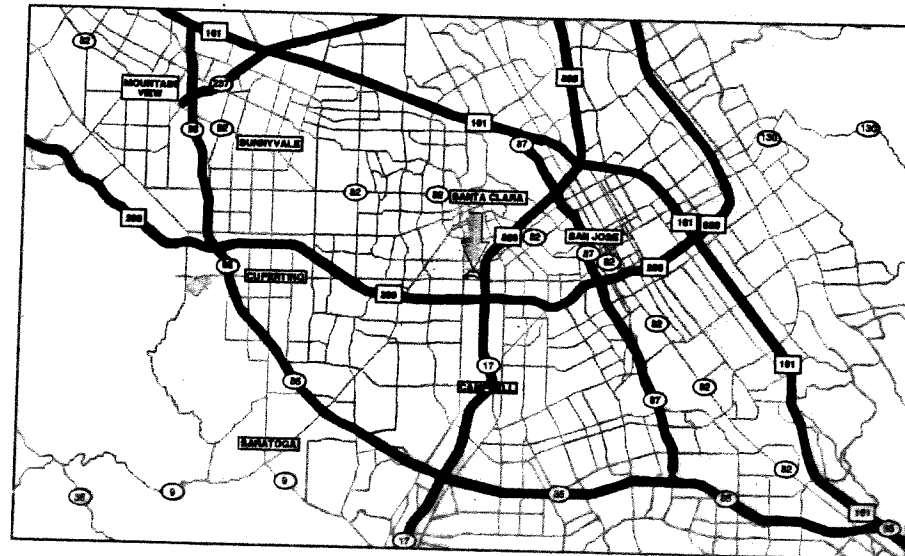
**Studio 2 Inc.**

**Sunny Tam**

**1230 Oakmead Pkwy Suite 303**

**Sunnyvale Ca 94085**

**408-730-8877**



## HOURS OF OPERATION

**SUNDAY – MONDAY 11am-10pm**

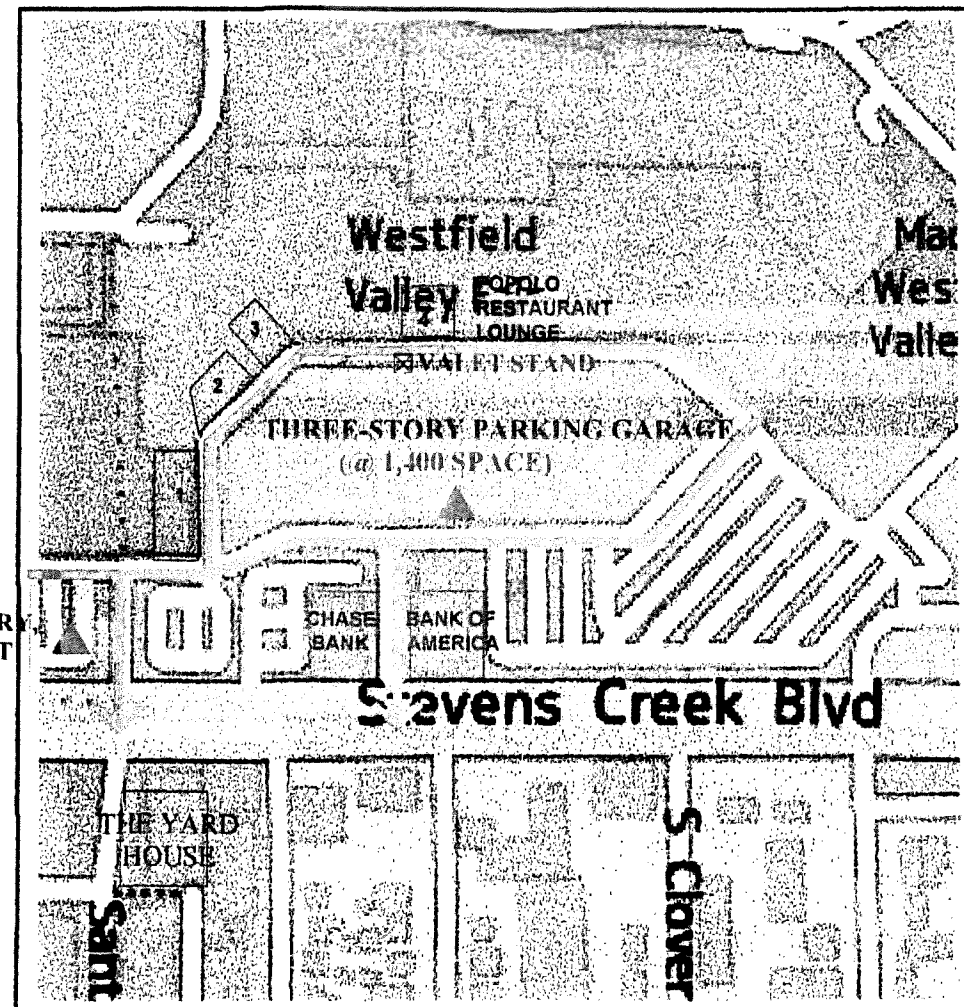
**TUESDAY- WEDNESDAY 11am-12am**

**THURSDAY-FRIDAY-SATURDAY 11am-2am**

CP-15-001

## FUZE RESTAURANT LOUNGE

WESTFIELD VALLEY FAIR (SOUTH) 2855 STEVENS CREEK BLVD SAN JOSE CA



SHARED PARKING  
(120 SPACE)  
SANTANA ROW,  
CHEESECAKE FACTORY,  
POPOLO RESTAURANT  
LOUNGE  
(AFTER 10 PM)

Fuze Restaurant/ Lounge

After 10pm

- Other food uses
- ▲ Parking
- Popolo restaurant lounge
- Ingress and egress  
(Path of travel)

Other food uses on Beechwood Avenue  
closure hours:

1. Cheesecake Factory - Fri & Sat, 12:30 AM,  
Sun/Thurs, 11:00 PM.
2. Andersen Bakery - same as mall closure hours.
3. Arigato Sushi - Sun/Thurs, 9:30 PM,  
Fri/Sat, 10:00 PM.

4. Fuze Restaurant Lounge Mon/Sun 11am-2am

Thurs, Fri, Sat, Mon, 11:00 AM - 2:00 AM.  
Tues, Wed, Sun, 11:00 AM - 12:00 AM.

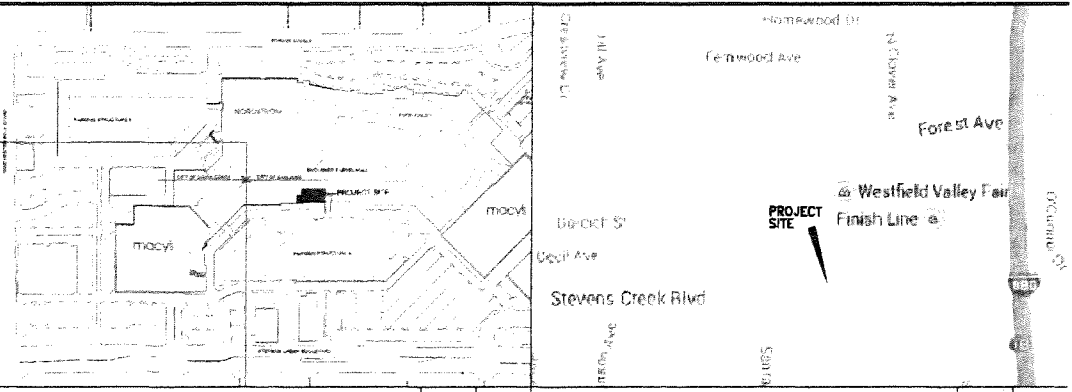
### Contact Information

Sandra Escobar

Escobar Legacy Consulting

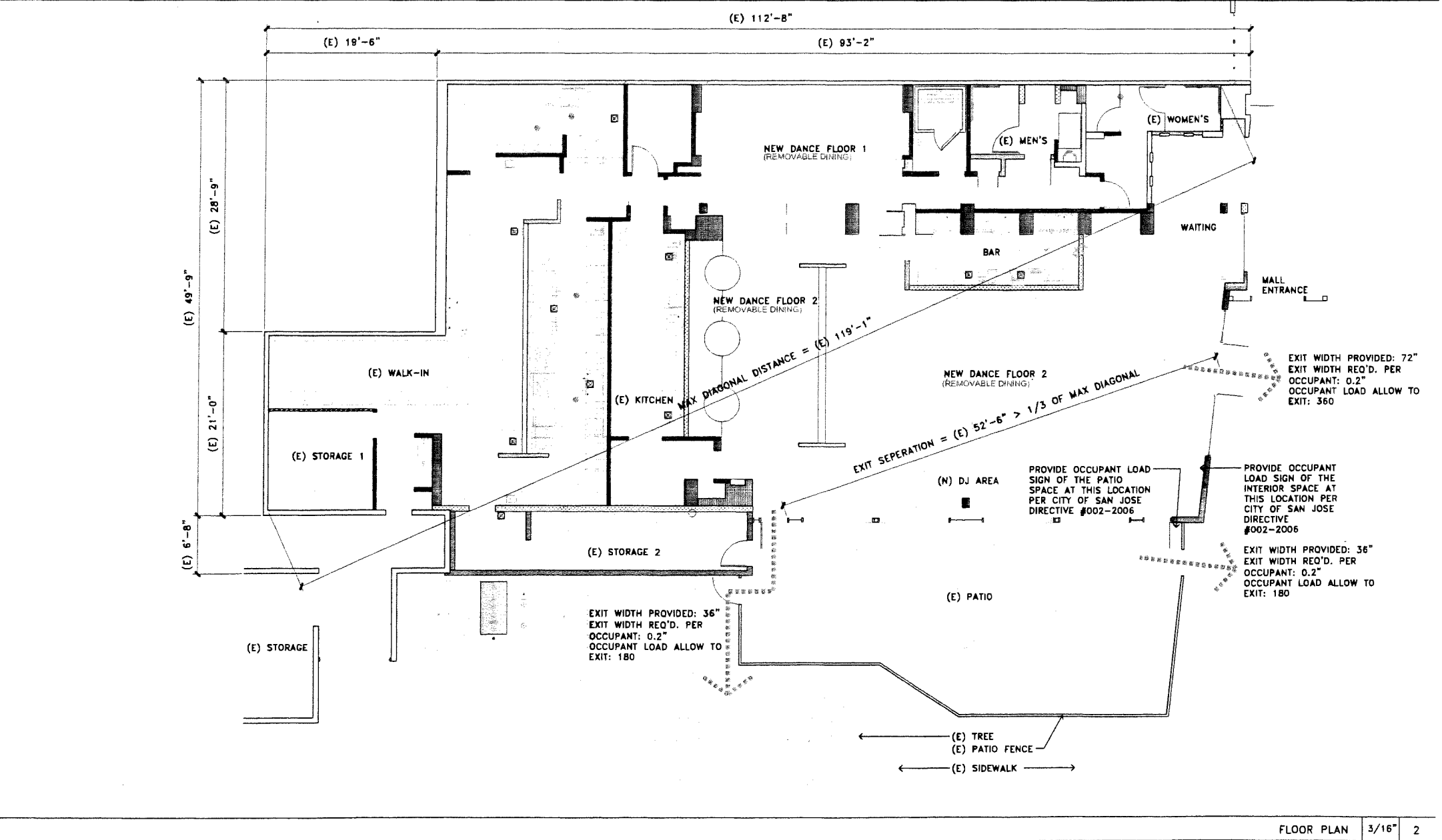
(408) 483-4611 [sesco2@aol.com](mailto:sesco2@aol.com)

ROOM	AREA	OCCUPANT LOAD FACTOR	OCCUPANT LOAD
WAITING	263	7	38
BAR	214	15	14
DANCE FLOOR 1	389	7	56
DANCE FLOOR 2	1607	7	230
OFFICE	72	100	1
KITCHEN / HALLWAY	2114	200	11
STORAGE 1	136	500	1
STORAGE 2	224	500	1
<b>TOTAL</b>	<b>5019</b>		<b>350</b>
PATIO	968	15	65



studio02

1230 oakmead pkwy. #303  
sunnyvale, ca 94085  
(408) 730.8877 (f) 408.716.2996  
(e) info@studio02.net



OCCUPANCY LOAD ANALYSIS

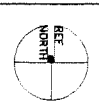
FUZE

WESTFIELD VALLEY FAIR  
2855 STEVENS CREEK BLVD  
SAN JOSE, CA 95050

01.26.15 ISSUED FOR PLANNING

PROJECT NO.: 15-5150

PROJECT INFORMATION  
FLOOR PLAN



A0.0

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